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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 18 2005

Federal Communications Commission
Office of Secretary

In the Matter of Federal-State Joint Board on Universal Service Centennial Cellular Tri-State Operating Partnership; Centennial Randolph Cellular, LLC; Elkhart Metronet, Inc.; Mega Comm, LLC; Michiana Metronet, Inc.; South Bend Metronet, Inc. Petition for Waiver of Section 54.314(d) of the Commission's Rules	DOCKET FILE COPY ORIGINAL CC Docket 96-45
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PETITION FOR WAIVER

**CENTENNIAL CELLUAR TRI-STATE OPERATING PARTNERSHIP, CENTENNIAL RANDOLPH CELULLAR, LLC, ELKHART METRONET, INC., MEGA COMM, LLC, MICHIANA METRONET, INC., SOUTH BEND METRONET, INC.
PETITION FOR WAIVER OF SECTION 54.314(d) OF THE COMMISSION'S RULES**

Centennial Cellular Tri-State Operating Partnership, Centennial Randolph Cellular, LLC, Elkhart Metronet, Inc., Mega Comm, LLC, Michiana Metronet, Inc., South Bend Metronet, Inc. (collectively "Centennial"), pursuant to Sections 1.3 and 1.925 of the Commission's rules,¹ hereby petitions the Commission for a waiver of the July 1, 2004 and October 1, 2004 filing deadlines set forth in Section 54.314(d) of the Commission's rules. Approval of this waiver request will allow Centennial to receive universal service support in Indiana beginning as of December 15, 2004, the effective date of the decision of the Indiana Utility Regulatory

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¹ See 47 C.F.R. § 1.3; § 1.925. Pursuant to § 1.1105 of the rules, no filing fee applies to this request.

Commission ("Indiana Commission") designating Centennial as an Eligible Telecommunications Carrier ("ETC").²

Centennial requires the universal service funding to which it is entitled in order to fulfill commitments it has made to the Indiana Commission to upgrade and expand its service and to build out its facilities to provide improved service to underserved areas in rural Indiana. For this reason, Centennial respectfully requests that this request be granted as soon as possible.

BACKGROUND

Centennial is a Commercial Mobile Radio Service ("CMRS") carrier and provides wireless telecommunications service to customers in thirty-seven counties in Indiana. On April 6, 2004 Centennial submitted a Renewed Application for Designation as Eligible Telecommunications Carriers to the Indiana Commission requesting designation as an ETC in the rural areas of Indiana within Centennial's authorized service territory. On December 15, 2004, the Indiana Commission approved Centennial's application and issued an Order designating Centennial as an ETC in Indiana for the purpose of receiving federal universal service support.³

Section 54.314 of the Commission's rules sets forth the requirements for state certification of support for rural carriers. States that desire universal service high-cost support for rural ETCs must file an annual certification by October 1 with the Universal Service Administrative Company ("USAC") and this Commission, stating that all high-cost support

² In the Matter of Centennial Cellular Tri-State Operating Partnership, Centennial Randolph Cellular, LLC, Elkhart Metronet, Inc., Mega Comm, LLC, Michiana Metronet, Inc., and South Bend Metronet, Inc. Application for Designation as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, Cause No. 41052-ETC-46, dated December 15, 2004 ("*Indiana Commission Centennial ETC Ruling*"). A copy of this ruling is attached as Exhibit A.

³ *Indiana Commission Centennial ETC Order, supra.*

received by rural ETCs within the state will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" (hereinafter referred to as a "Section 54.314 Certification").⁴ Section 54.314 establishes a quarterly filing schedule that determines when an ETC may begin receiving support during the calendar year.⁵ Universal service support will only be provided to a rural ETC in a state to the extent the state has filed the requisite certification.

On December 22, 2004, the Indiana Commission issued an Order directing the Commission's Secretary to inform the FCC and USAC that Centennial has "met the requirements of Section 254(e) and the FCC's RTF Order, and is eligible to begin receiving high-cost support as of December 15, 2004."⁶ In response to this Order, the Indiana Commission filed a Section 54.314 Certification with this Commission and USAC on December 30, 2004, certifying Centennial as eligible to receive federal universal service funds.⁷ However, due to the filing deadlines set forth in Section 54.314(d) of the Commission's rules, Centennial will be denied universal service support for the period December 15-December 31, 2004 and the first quarter of 2005 unless the Commission grants this waiver request.

As set forth below, a waiver of the Section 54.314 Certification filing deadlines will allow Centennial to receive universal service support beginning as of the effective date of its

⁴ See 47 C.F.R. §54.314.

⁵ Pursuant to Section 54.314(d), a state's certification must be filed by October 1 of the preceding calendar year for eligible carriers to receive support beginning in the first quarter of the subsequent calendar year. If the October deadline is missed, the certification must be filed by January 1 for support to begin the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.

⁶ See In the Matter of the Commission's Certification of Rural Carriers' Eligibility to Receive Federal High-Cost Universal Service Support, Pursuant to the Telecommunications Act of 1996, the FCC's May 23, 2001 Order, and Other Related FCC Orders, and in Particular, the Application of Centennial Cellular Tri-State Operating Partnership; Centennial Randolph Cellular, LLC; Elkhart Metronet, Inc.; Mega Comm, LLC; Michiana Metronet, Inc.; and South Bend Metronet, Inc. So Certified, Cause No. 42067-HLS-46, dated December 22, 2004 ("*Indiana Commission Centennial High-Cost Certification Order*"). A copy of this Order is attached as Exhibit B.

⁷ See Letter dated December 29, 2004 from Nancy E. Manley, Secretary to the Indiana Commission, to I. Flannery (USAC) and M. Dortch (FCC) ("*Indiana Commission Letter*"). A copy is attached as Exhibit C.

ETC designation for Indiana. Such action would be consistent with Commission precedent, consistent with the Commission's well-established competitively neutral universal service policies, and would serve the public interest.

REQUEST FOR WAIVER

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section 1.925(b) (3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁸

Federal courts also have recognized that "a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest."⁹ Accordingly, the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."¹⁰

The Commission established the quarterly Section 54.314 Certification filing schedule to facilitate USAC's ability to report universal service support projections to the FCC. The schedule in Section 54.314 was not intended to create a process that disadvantages carriers receiving ETC designation subsequent to one of the quarterly certification deadlines. The July 1, 2004 filing deadline fell more than 5 months prior to Centennial's ETC designation

⁸ See 47 C.F.R. §1.925(b) (3).

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027(1972).

¹⁰ *Northeast Cellular Telephone Co.*, 897 F.2d at 1166 (citing *WAIT Radio* 418 F.2d at 1159).

in Indiana. The October 1, 2004 filing deadline for 2005 support fell more than 2 months prior to Centennial's ETC designation. In these circumstances, it is clear that the Indiana Commission could not have met, under any circumstances, the normal deadline for Centennial to receive support beginning on December 15, 2004. Receipt of such support, however, is what the Indiana Commission clearly intended.¹¹

The Commission has previously concluded that strict application of the Section 54.314 Certification filing schedule is inconsistent with the public interest and undermines the Commission's goals of competitive neutrality when a carrier is denied universal service support it is otherwise entitled to receive. In granting similar waiver requests to competitive ETCs, the Commission has acknowledged that strict application of the certification filing schedule set forth in Section 54.314(d) may have the effect of penalizing newly designated ETCs. For that reason the Commission has determined that it would be "onerous" to require an ETC to forego universal service support solely because it was designated as an ETC after a certification deadline.¹²

Here, it would be onerous to deny Centennial receipt of universal service support for more than 3 months merely because its ETC designation occurred *after* the Section 54.314 Certification filing deadlines for 4Q-2004 and 1Q-2005 support.¹³ Centennial's circumstances are generally similar to the circumstances of several competitive ETCs that have been granted

¹¹ See *Indiana Commission Centennial High-Cost Certification Order*, at ordering para. 1, "Centennial shall be, and hereby is, certified by this Commission as having satisfied the requirements of Section 254(e) and the FCC's RTF Order, and is eligible to begin receiving high-cost support as of December 15, 2004."

¹² West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers, Order, CC Docket No. 96-45, 16 FCC Rcd 5784 (2001) ("West Virginia PSC Order"); RFB Cellular, Inc. Petition for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, 17 FCC Rcd 24387, para. 6 (2002) ("RFB Waiver Order"); Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, 18 FCC Rcd 7138 (2002) ("Guamcell Waiver Order"); Western Wireless Corporation Petition for Waiver of Sections 54.314 of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, 18 FCC Rcd 14689, para 6 (2003) ("Western Wireless Order").

¹³ See Western Wireless Order, para. 7.

waivers of the filing deadlines set forth in Section 54.314.¹⁴ Denying support to Centennial, a competitive ETC, based upon the timing of its ETC designation would undermine the Commission's goals of competitive neutrality. Moreover, the Section 54.314 Certification filing schedule has the unintended consequence with respect to Centennial in Indiana of delaying universal service support well beyond the effective date of Centennial's ETC designation.¹⁵ This is inconsistent with, and frustrates, the underlying purpose of the Commission's rules, and is inequitable and unduly burdensome to Centennial.

For all these the reasons, granting a waiver of the filing deadline set forth in Section 54.314(d) of the rules — which will allow Centennial to receive universal service support beginning on December 15, 2004, the effective date of its ETC designation in Indiana — is appropriate and consistent with Commission precedent, consistent with the Commission's statutory goal of preserving and advancing universal service, and in the public interest. Centennial and the Indiana consumers that it serves should not be deprived of substantial universal service support as a result of the unintended timing problem created by the quarterly filing deadlines of Section 54.314(d). Denying Centennial support under these circumstances is contrary to the statutory goal of promoting the availability of universal service to consumers in high-cost and rural areas.

¹⁴ See RFB Waiver Order, GuamCell Order, Western Wireless Order.

¹⁵ Indeed, without the waiver, Centennial will not receive its first universal service support disbursement until the end of May, 2005, more than five months after the Indiana Commission Centennial ETC Ruling.

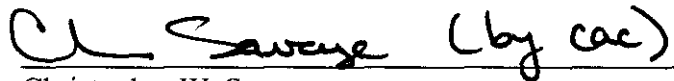
CONCLUSION

For the reasons stated herein, Centennial respectfully requests, pursuant to Sections 1.3 and 1.925 of the FCC's rules, a waiver of Section 54.314(d) of the Commission's rules.

Respectfully submitted,

Centennial Cellular Tri-State Operating Partnership
Centennial Randolph Cellular LLC
Elkhart Metronet, Inc.
Mega Comm, LLC
Michiana Metronet, Inc.
South Bend Metronet, Inc.

By:

 (by csc)

Christopher W. Savage
Danielle F. Frappier
COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Ave., NW
Suite 200
Washington, DC 20006
(202) 659-9750

William Roughton
Vice President – Legal Regulatory Affairs
Centennial Communications Corp.
Of Counsel

January 18, 2005

CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that on this 18th day of January, 2005, I caused a copy of the foregoing *Centennial Celluar Tri-State Operating Partnership, Centennial Randolph Celullar, LLC, Elkhart Metronet, Inc., Mega Comm, LLC, Michiana Metronet, Inc., South Bend Metronet, Inc. Petition For Waiver of Section 54.314(D) of The Commission's Rules* to be sent via hand delivery(*), or U.S. Mail to the following

Narda Jones*
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street
Room 5A426
Washington, DC 20554

Thomas Buckley*
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street
Room 5B552
Washington, DC 20554

Irene Flannery
Vice President, High Cost Program
USAC
2120 L. Street, NW, Suite 600
Washington, DC 20037

Nancy E. Manley, Secretary
Indiana Utility Regulatory Commission
302 W. Washington Street, Suite E-306
Indianapolis, Indiana 46204-2764

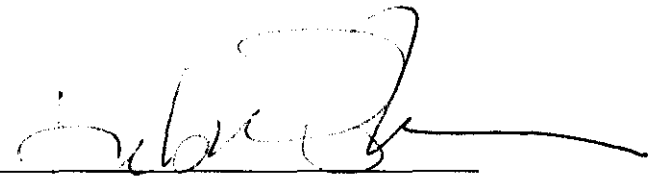

Debra Sloan

EXHIBIT A

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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IN THE MATTER OF CENTENNIAL)
CELLULAR TRI-STATE OPERATING)
PARTNERSHIP; CENTENNIAL)
RANDOLPH CELLULAR LLC;)
ELKHART METRONET, INC.; MEGA)
COMM LLC; MICHIANA METRONET, INC.;)
AND SOUTH BEND METRONET, INC.)
APPLICATION FOR DESIGNATION AS)
ELIGIBLE TELECOMMUNICATIONS)
CARRIERS PURSUANT TO SECTION 214(e)(6))
OF THE COMMUNICATIONS ACT OF 1934)

CAUSE NO. 41052-ETC 46

APPROVED: DEC 15 2004

BY THE COMMISSION:

David E. Ziegner, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On April 6, 2004, Centennial Cellular Tri-State Operating Partnership, Centennial Randolph Cellular LLC, Elkhart Metronet, Inc., Mega Comm LLC, Michiana Metronet, Inc. and South Bend Metronet, Inc. (collectively, "Petitioner" or "Centennial") filed its Renewed Application for Designation as Eligible Telecommunications Carriers ("Renewed Application") with the Indiana Utility Regulatory Commission ("Commission.") By its Renewed Application, Centennial seeks designation as an "eligible telecommunications carrier" ("ETC") pursuant to 47 U.S.C. §214(e), so that it may receive federal universal service support.

Pursuant to notice and as provided for in 170 I.A.C. 1-1.1-15, a Prehearing Conference in this cause was held in Room TC10 of the Indiana Government Center South, Indianapolis, Indiana at 10:00 a.m. on May 8, 2004. Proofs of publication of the notice of Prehearing Conference have been incorporated into the record and placed in the official files of the Commission. Centennial and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared and participated at the Prehearing Conference. No members of the general public appeared at the Prehearing Conference.

On May 26, 2004, the Commission issued its Prehearing Conference Order memorializing the procedural schedule and other matters addressed at the Prehearing Conference. The Presiding Officers established the procedural schedule for prefiling testimony in this Cause and set a date for a final Evidentiary Hearing in this Cause.¹

¹ Pursuant to the OUCC's *Motion for Extension of Time to Prefile Testimony* filed on June 17, 2004, the procedural schedule established at the Prehearing Conference was modified to provide the OUCC and any Intervenor until July 9, 2004 to prefile their testimony in this cause. See, *Commission's June 21, 2004 docket entry granting the OUCC's motion.*

On June 15, 2004 and July 12, 2004, the Commission issued data requests in two separate docket entries seeking various information and documents from Centennial. Centennial filed its non-confidential response to the Commission's June 15, 2004 data requests on July 6, 2004 and served its confidential response on the Commission on July 19, 2004.² Centennial filed its response to the Commission's July 12, 2004 data requests on July 20, 2004.

Pursuant to notice duly given as provided by law, an evidentiary hearing in this cause was held in Room E306 of the Indiana Government Center South, Indianapolis, Indiana at 9:30 a.m. on July 26, 2004. Proofs of publication of the notice of the evidentiary hearing have been incorporated into the record and placed in the official files of the Commission. Prior to the evidentiary hearing, the Indiana Exchange Carrier Association ("INECA") petitioned to intervene in the cause, which petition the Presiding Officers granted. Centennial, the OUCC and INECA appeared and participated at the evidentiary hearing. No members of the general public appeared or otherwise sought to testify at the evidentiary hearing.

Pursuant to the schedule for post-hearing submissions established at the July 26, 2004 evidentiary hearing, Centennial submitted its Proposed Order and Notice of Omitted Exchanges with the Commission on August 27, 2004 ("Proposed Order Filing.") As part of its Proposed Order Filing, Centennial notified the Commission of its inadvertent omission from Centennial's original Exhibits E and E-1 of five rural exchanges, specifically the Burrows, Deer Creek, Yeoman, Roselawn, and Buffalo exchanges. Centennial explained the circumstances surrounding its inadvertent omission of these five exchanges and proposed, among other things, to submit late-filed exhibits identifying the omitted exchanges and affirming that all of Centennial's commitments concerning service, coverage, etc. would fully apply to those five omitted exchanges.

The OUCC and INECA submitted responsive filings to Centennial's Proposed Order Filing. In its responsive filing, the OUCC raised a concern that by permitting Centennial to submit revised Exhibits E and E-1 into the record as late-filed exhibits, statutory and public notice requirements may not be satisfied. INECA raised in its responsive filing an objection to Centennial's certification as an ETC in certain exchanges which would result in the so-called "splitting" of certain exchanges, since Centennial's FCC licenses do not fully encompass the entirety of certain exchanges.

On September 15, 2004, the Presiding Officers issued a docket entry re-opening the administrative record of this proceeding for the purpose of taking additional evidence, pursuant to 170 I.A.C. 1-1.1-22(d). The Presiding Officers specifically requested the parties to submit additional, relevant evidence addressing the following two issues: (a) whether or not Centennial should be granted the right to add the five requested exchanges to its Renewed Application; and

² Centennial filed on July 6, 2004 a verified request seeking confidential protection for the confidential portions of its response to the Commission's June 15, 2004 data requests, which the Commission granted on a preliminary basis pursuant to a July 8, 2004 docket entry issued in this cause. The Commission's July 8, 2004 docket entry also granted confidential protection on a preliminary basis for Exhibits F-1, F-2, and G to the direct testimony of Jeffrey L. Shively, which Centennial had requested pursuant to a separate verified request seeking confidential treatment of these exhibits filed with the Commission on May 21, 2004. The Commission hereby finds that both of Centennial's requests for confidential treatment should continue on an on-going basis.

(b) whether or not Centennial should be granted the opportunity, presuming ETC designation, to split wire centers/exchanges without prior definition of a service area by the FCC and/or this Commission. *See, September 15, 2004 Docket Entry.* The Presiding Officers established an October 8, 2004 prefilings testimony date and further established a second evidentiary hearing date for the purpose of admitting such additional evidence into the record of this proceeding.

Pursuant to notice duly given as provided by law, a second evidentiary hearing was held in this cause in Room E306 of the Indiana Government Center South, Indianapolis, Indiana at 10:00 a.m. on November 3, 2004. Proofs of publication of the notice of the evidentiary hearing have been incorporated into the record and placed in the official files of the Commission. Centennial, the OUCC, and INECA all appeared and participated at the second evidentiary hearing. No members of the general public appeared at the evidentiary hearing.

The Commission, having examined all of the evidence of record and being duly advised in the premises, now finds:

1. **Notice of Jurisdiction.** Proper, legal and timely notice of the hearings in this cause was given and published by the Commission as provided for by law. The proofs of publication of the notices of the hearings have been incorporated into the official files of the Commission. Pursuant to the Telecommunications Act of 1996 ("TA-96"), 47 C.F.R. 54.201, 47 C.F.R. 54.203 of the Federal Communications Commission's ("FCC") rules, and I.C. 8-1-2-1, this Commission is authorized to designate ETCs, thereby enabling those so designated to apply for federal universal service support under 47 U.S.C. §254. The Commission therefore has jurisdiction over the parties and subject matter of this cause.

2. **Relevant Prior Proceedings.** On April 2, 2003, Centennial filed its first application to be designated as an ETC with the Commission which was docketed under Cause No. 41052-ETC-45 (or "Centennial's First Case"). At the same time the Commission considered Centennial's first ETC request, the Commission entertained another pending application (Cause No. 41052-ETC-43 or "Nextel's Case") in which Nextel Partners, another wireless carrier, sought designation as a competitive ETC in non-rural and rural areas of Indiana. Centennial's initial ETC application was heard, on July 22, 2003, and Nextel Partners' application was heard two months later, on October 2, 2003.

On March 17, 2004, the Commission issued separate orders in Centennial's First Case and Nextel's Case, wherein it denied Centennial's request for designation as an ETC and granted Nextel Partners' request for ETC designation.³ The Commission found that both applications presented a question of first impression in Indiana regarding the "public interest" evidentiary showing required of an additional competitive ETC applicant. The Commission acknowledged the novel issue raised by both Centennial's and Nextel's applications when it stated:

Until now, this Commission has not been called upon to interpret or apply the above "public interest" test to any requests for designation as an additional ETC

³ The Commission's March 17, 2004 Order issued in Centennial's First Case is hereinafter referred to as "Centennial Order" and the Commission's March 17, 2004 Order issued in Nextel's Case is hereinafter referred to as "Nextel Order."

in rural service areas. This issue has not been specifically addressed in orders issued in prior generic proceedings before this Commission or in prior carrier-specific requests for designation as ETCs in the various sub-dockets of Cause No. 41052. Accordingly, this is a case of first impression in Indiana.

Centennial Order, p. 5

The Commission answered this question of first impression by enumerating the specific factors it took into account in making its "public interest" determination with respect to both ETC applications, thereby providing a road map of the evidence needed to support designation as an additional ETC in rural areas. The primary difference in the Commission's treatment of Centennial's and Nextel Partners' ETC applications was the Commission's finding that Centennial had failed to provide the specific, detailed evidentiary presentation supporting a favorable "public interest" determination recently prescribed by the Commission in the Nextel Case.

Centennial provided a two-fold response to the Commission's denial of its first ETC application. Centennial filed both a petition seeking rehearing and reconsideration in Cause No. 41052-ETC-45 and a new or renewed application initiating this proceeding, which sought virtually the same relief. Centennial eventually filed on May 28, 2004 a motion to hold its Petition for Rehearing in abeyance under Cause No. 41052-ETC-45 and ultimately dismissed its Petition for Rehearing at the July 26, 2004 evidentiary hearing. (TR. 9.)

3. **Petitioner's Characteristics.** Centennial is a commercial mobile radio service ("CMRS") provider, and a common carrier as defined by 47 U.S.C. §153(10) and 47 C.F.R. 20.9(a)(7). Centennial is also an authorized CMRS provider in the State of Indiana where it holds FCC licenses for non-wireline cellular service markets covering thirty-seven (37) Indiana counties. Centennial holds FCC licenses for the non-wireline cellular service markets designated as Indiana RSAs 1-4, the Fort Wayne MSA, Kokomo MSA, South Bend MSA, Elkhart-Goshen MSA, and the following counties: Adams, Allen, Blackford, Carroll, Cass, Clinton, Dekalb, Elkhart, Fayette, Franklin, Fulton, Grant, Henry, Howard, Huntington, Jasper, Jay, Kosciusko, LaGrange, LaPorte, Marshall, Miami, Newton, Noble, Pulaski, Randolph, Rush, St. Joseph, Starke, Steuben, Tipton, Union, Wabash, Wayne, Wells, White, and Whitley. Centennial currently has over 275,000 customers in Indiana, with the greatest concentration of customers located in the northern and eastern parts of the state.

4. **Requirements for ETC Designation.** In Cause No. 40785, this Commission adopted the FCC's original ETC eligibility requirements for designation of ETCs in the State of Indiana. Accordingly, each Indiana ETC receiving federal universal service support is required by FCC Rule 54.101(b) to offer the following nine universal services or functionalities, which are described more fully in Rule 54.101(a):

- a. Voice grade access to the public switched network;
- b. Local usage;
- c. Dual tone multi-frequency signaling or an equivalent;
- d. Single-party service or its functional equivalent;
- e. Access to emergency services;

- f. Access to operator services;
- g. Access to interexchange service;
- h. Access to directory assistance;
- i. Toll limitation for qualifying low-income customers.

In addition to offering the above services, ETCs are required by FCC Rules 54.405 and 54.411 to offer qualifying low-income customers both "Lifeline" and "Link Up" programs as a condition precedent to receiving federal universal service support. FCC Rule 54.201(d)(2) also requires ETCs receiving federal universal service support to publicize the availability of and charges for the nine universal services and the Lifeline and Link Up programs, using media of general distribution. Pursuant to this Commission's November 5, 1997 Order in Cause No. 40785, carriers seeking ETC designation in Indiana must also file proposed Lifeline/Link Up tariffs and boundary maps depicting the areas for which ETC designation is sought.

Finally, because Centennial's request is a request to be designated as an additional ETC in rural service areas in Indiana, this Commission must also determine whether the public interest would be served by designating more than one ETC in the specified rural service areas. TA-96 provides that an application for additional ETC status in a rural service area must satisfy a public interest test. Specifically, TA-96 provides that:

[U]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of Paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. §214(e)(2).

5. Evidentiary Hearings

A. Motions Granted at the July 26, 2004 Evidentiary Hearing.

At the commencement of the July 26, 2004 evidentiary hearing, the Presiding Officers addressed several pending motions. The Presiding Officers first granted without objection Centennial's *Verified Motion for Admission Pro Hac Vice* filed on July 23, 2004 seeking the admission of Chris Savage as counsel for Centennial in this cause. (TR. 3.) The Presiding Officers next granted without objection Centennial's *Motion to Supplement the Testimony of Jeffrey L. Shively*, incorporating Centennial's revised, updated version of its illustrative Lifeline/Link Up tariff, filed with the Commission on July 19, 2004. (TR. 5.) The Presiding Officers next granted in part Centennial's *Motion to Take Administrative Notice*, filed with the Commission on July 22, 2004. (TR. 5-6.) The Presiding Officers took administrative notice of Centennial's Renewed Application and Centennial's high-cost certification filings in Cause No.

42067-HLS-46, but declined to take further administrative notice of Centennial's responses to the Commission's data requests, on the grounds that the Commission's data requests and Centennial's responses thereto were already part of the administrative record. (TR. 6.)

B. Summary of Evidence Presented at the July 26, 2004 Hearing.

The evidence offered and admitted into the record on behalf of Centennial included Centennial's Exhibit 1 consisting of the *Prefiled Direct Testimony of Jeffrey L. Shively* dated May 21, 2004 and all exhibits attached thereto; Centennial's Exhibit 1-A consisting of Centennial's revised, updated Lifeline/Link Up illustrative tariff which supplanted Exhibit E originally attached to Mr. Shively's direct testimony; and Centennial's Exhibit 2 consisting of Centennial's responses to the OUCC's data requests served in this proceeding as well as Centennial first ETC proceeding, Cause No. 41052-45, which was entered into the record by agreement of the parties. Centennial's witness Jeffrey L. Shively was cross-examined by the OUCC and INECA. Mr. Shively also answered questions from the Presiding Officers. The OUCC and INECA did not submit any exhibits or offer any testimony into the record⁴.

C. Centennial's Late-Filed Exhibit.

In response to questions raised at the July 26, 2004 evidentiary hearing, Centennial filed with the consent and agreement of all parties Centennial's Late-Filed Exhibit 3 on August 3, 2004 consisting of a copy of the FCC's decision *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an [ETC]*, FCC 03-338 (released January 29, 2004) ("Virginia Cellular Decision").

D. Summary of Evidence Presented at the November 3, 2004 Hearing.

The evidence offered and admitted into the record on behalf of Centennial at the second evidentiary hearing included Centennial's Exhibit 4 consisting of the *Supplemental Testimony of Jeffrey L. Shively* prefiled with the Commission on October 8, 2004 and all exhibits attached thereto; Centennial's Exhibit 5 consisting of Centennial's October 29, 2004 letter to the OUCC clarifying perceived discrepancies concerning the number of "split" exchanges arising from Centennial's proposed ETC service area; and Centennial's Exhibit 6 consisting of a copy of the FCC's decision *In the Matter of Federal-State Joint Board on Universal Service, Advantage Cellular Systems, Inc., Petition for Designation as an ETC in the State of Tennessee* (released October 22, 2004) ("Advantage Cellular Decision.") Centennial's witness Jeffrey L. Shively sponsored the submission of Centennial's Exhibits 4 through 6 into the record, and was subjected to limited cross-examination by the OUCC and INECA. Mr. Shively also answered questions from the Presiding Officers.

Pursuant to stipulation by the parties, the OUCC offered and admitted into the record Public's Exhibit 1 consisting of the *Prefiled Testimony of Ronald L. Keen* filed with the Commission on October 8, 2004, with the qualification that Centennial's Exhibit 5 answered and resolved any concerns or discrepancies with the number or identification of "split" exchanges noted in Mr. Keen's October 8, 2004 prefiled testimony. INECA did not offer any exhibits, testimony, or evidence into the record at the November 3, 2004 evidentiary hearing.

⁴ The OUCC filed its *Notice of Intent Not to File Testimony* in this cause on July 9, 2004.

E. Centennial's Renewed Application.

The Commission took administrative notice of Centennial's Renewed Application, and made it part of the record of this proceeding. Through its Renewed Application, Centennial presented the Commission with specific information and data tailored to satisfy each of the factors laid out by the Commission as part of the evidentiary "road map" applicants must satisfy for designation as an ETC in Indiana. Such information and data included the following:

Centennial's Renewed Application identified the number of customers to which Centennial provides wireless telecommunications service in rural and metropolitan areas in Indiana, throughout thirty-seven (37) counties. Centennial provided a corporate overview of Centennial Communications Corp., its various operating subsidiaries seeking ETC designation in this cause, and identified the officers and directors of Centennial Communications Corp. and its various operating entities.⁵

Centennial also stated in its Renewed Application that it is financially qualified and committed to making the necessary investments to provide high quality telecommunications services throughout its Indiana service areas. Centennial also stated that as an FCC licensee it has been deemed financially qualified to provide the services authorized under its cellular licenses.

Centennial's Renewed Application further stated that Centennial has the experience in the telecommunications and wireless business to be designated as an ETC in Indiana, including experienced personnel who have worked to build Centennial's network infrastructure and to develop its service offerings. Centennial attached as Exhibit C to its Renewed Application a detailed biographical description of the key technical and managerial personnel of Centennial's Indiana operations.

Centennial's Renewed Application also stated that Centennial meets the FCC's service offering requirements necessary for designation as an ETC. Centennial attached a separate certification to its Renewed Application demonstrating that Centennial provides eight of the nine universal services or functionalities required by 47 C.F.R. 54.101(a), and that it will provide the ninth, toll limitation, upon receipt of ETC designation. Centennial also stated that it will provide Lifeline/Link Up discounts to qualifying low-income customers as required by 47 C.F.R. 54.201(d) and 54.411 upon receipt of ETC designation. Centennial stated that it will advertise the availability of its Lifeline/Link Up programs in accordance with federal law, and that it would file a description of its low income assistance telephone service programs with the Commission.

Centennial attached Exhibits E and E-1 to its Renewed Application, which identified the specific exchanges/wire centers located within the study areas of the rural local exchange carriers ("RLECs") for which Centennial seeks ETC designation.⁶ Centennial seeks ETC designation on

⁵ Some of the information and data contained within Centennial's Renewed Application was restated in the direct testimony of Jeffrey L. Shively. See, *infra* Section 5E summarizing the direct testimony of Jeffrey L. Shively.

⁶ Centennial subsequently submitted, through Mr. Shively's supplemental testimony prefiled on October 8, 2004, Revised Exhibit E and Revised Exhibit E-1 clarifying the geographic area of its proposed ETC service area. See, *discussion infra*, Section 5H.

an exchange/wire center basis for those rural local exchange areas specifically identified in Exhibit E because, as a wireless carrier, it is permitted to provide services only in its FCC-licensed areas, which are not based on the study areas of the RLECs, and may include only parts of the RLECs' study areas.

Centennial's Renewed Application also stated that designation of Centennial as an ETC would serve the public interest in Indiana by increasing competitive choice, provide consumers lower prices, encourage carriers to improve services and expand product offerings, and enable Centennial to more quickly deploy more technologically advanced products.

Centennial's Renewed Application explained that Centennial will use all USF funds for the purpose of meeting specific network needs for the provision, maintenance, and upgrading of facilities and services in the areas within Indiana where it is seeking ETC designation and will separately track and account for its use of USF funds received as a result of its designation as an ETC. Centennial's Renewed Application also stated that Centennial commits to provide reports to the Commission detailing its progress in the development and expansion of its network and services and to work with the Commission with respect to Centennial's provision of ETC services.

Centennial incorporated its high-cost certification as an exhibit to its Renewed Application, in which it certified to the Commission that all high-cost support provided to Centennial as a result of its ETC designation in this cause will be used only for the provision, maintenance, and upgrading of facilities and services for which federal universal service high cost support is intended, pursuant to Section 254(e) of TA-96.

F. Centennial's Direct Testimony Presented by Witness Jeffrey L. Shively.

At the evidentiary hearing, Centennial's witness, Jeffrey L. Shively, Vice President of Engineering at Centennial, sponsored his direct testimony pre-filed with the Commission on May 21, 2004 and Centennial's revised, updated Lifeline/Link Up tariff as his testimony and supplemental testimony in this proceeding. Mr. Shively was cross-examined by INECA and the OUCC and answered questions from the Presiding Officers.

Mr. Shively works out of Centennial's local Indiana office located at 5302 Constitution Drive, Fort Wayne, Indiana 46804. Mr. Shively's responsibilities with Centennial consist of providing a variety of engineering services for Centennial, and its affiliates and subsidiaries. Mr. Shively's responsibilities include overseeing the maintenance, development, and upgrade of Centennial's network, facilities, and services. Mr. Shively explained that he has 31 years experience in the telecommunications industry, having spent the majority of his professional career with GTE Indiana and GTE Wireless (now Verizon Wireless.) A copy of Mr. Shively's resume was attached as Exhibit A to his direct testimony.

Mr. Shively identified other jurisdictions where Centennial's affiliates or operating subsidiaries have received ETC designation, including Puerto Rico, Mississippi, Michigan, and Louisiana. According to Mr. Shively's testimony, Centennial Puerto Rico Operations Corp. received ETC designation in Cause Nos. 97-US-0002 and 97-US-0003 on December 29, 1997. Centennial Tri-State Operating Partnership and Centennial Clairborne Cellular Corp received

ETC designation in Mississippi for non-rural areas in Docket No. 2003-UA-0234 on September 24, 2003 and for rural areas in Docket No. 2003-UA-0234 on April 7, 2004. Michiana Metronet, Inc., Centennial Michigan RSA 6 Cellular Corp., and Centennial Michigan RSA 7 Cellular Corp. received ETC designation in Michigan in Case No. U-13751 on September 11, 2003. Centennial Lafayette Communications, LLC; Centennial Beauregard Cellular, LLC; Centennial Hammond Cellular, LLC; Centennial Caldwell Cellular Corp.; and Centennial Morehouse Cellular, LLC received ETC designation for rural areas of Louisiana on May 12, 2004, effective as of January 14, 2004. He further explained that Centennial has been receiving funds from the federal USF as a result of its ETC designations in Puerto Rico, Michigan, and non-rural areas of Mississippi, but that it had not yet begun receiving federal USF funds as a result of its more recently received ETC designations rural Mississippi and Louisiana.

Mr. Shively provided information demonstrating that Centennial's network can provide each of the supported services required of an ETC, and that Centennial will offer all of those services to its universal service customers once designated an ETC. Mr. Shively testified that Centennial provides voice grade access to the public switched telephone network ("PSTN") by means of its various interconnection agreements with SBC Indiana, United Telephone Company of Indiana d/b/a Sprint, and Verizon North, Inc. Mr. Shively further testified that in some limited circumstances, such calls are transported pursuant to Centennial's transport services arrangement with its current long distance provider, QWEST. Mr. Shively explained that all of Centennial's service offerings in Indiana include some minimum local usage and attached a copy of Centennial's current rate plans for Indiana as Exhibit B to his testimony. Mr. Shively explained that Centennial currently uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that are functionally equivalent to DTMF signaling. Mr. Shively further explained that Centennial has the ability to pass DTMF signaling over its TDMA and GSM systems.

Continuing to address Centennial's provision of the supported services, Mr. Shively explained that Centennial provides a dedicated message path for the length of all customer calls and, consequently, satisfies the requirement that an ETC applicant provide single party service or its equivalent. He also testified that Centennial is E911 Phase I and Phase II compliant. According to Mr. Shively, Centennial has fully implemented Phase I E911 in Indiana and has deployed Phase II E911 where it has received valid requests from PSAPs. Mr. Shively explained that Centennial is working with the Indiana Enhanced Wireless 911 Board and Cost Recovery Group in coordinating Phase II E911 deployment. Mr. Shively attached to his testimony as Exhibits C and D, respectively, a copy of Centennial's Seventh Quarterly Report on Phase II E911 Compliance, filed May 3, 2004, and a copy of Centennial's Amended Report of E911 Reporting Requirements, filed September 9, 2002, which describe Centennial's use of the network-based solution offered by Grayson Wireless.

Mr. Shively further testified that Centennial provides all of its customers with access to operator services provided by either Centennial or an outside contractor, such as Verisign, which provides automated operator assistance services. According to Mr. Shively, Centennial customers can dial "O" and receive automated assistance to place a call with a credit card, calling card, or prepaid card, or to make a collect call. Centennial customers may also dial "611" and be connected to a representative at Centennial's call center, who can place calls for customers. He further testified that Centennial access to interexchange carriers by providing all

of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements Centennial has with one or more interexchange carriers ("IXCs.") Furthermore, Centennial's customers are able to reach their IXC of choice by dialing an appropriate access number provided by the IXC. Centennial customers may access directory assistance by dialing "411" or "xxx-555-1212," which results in a direct connection to Verisign, which presently provides this service to Centennial customers.

Mr. Shively explained that Centennial does not currently provide "toll limitation," but that Centennial will offer "toll limitation" to qualifying low income customers upon designation as an ETC by the Commission. As Mr. Shively explained, Centennial will provide toll blocking service by amending a requesting customer's profile in Centennial's switching equipment which will block toll calls attempted from the customer's phone.

Mr. Shively also testified that Centennial will provide Lifeline/Link Up services upon its designation as an ETC. Mr. Shively identified Centennial's Primary Service Area Calling Plan, which provides for 150 Anytime minutes to be used inside Centennial's Primary Service Area at a standard monthly rate of \$19.99, as the service offering it intends to promote to eligible Lifeline/Link Up customers.

Mr. Shively attached as Exhibit E to his direct testimony a copy of Centennial's illustrative tariff describing Centennial's proposed Lifeline/Link Up programs. He acknowledged in his direct testimony that Centennial anticipated revising its proposed Lifeline/Link Up programs and illustrative tariff to conform its offerings to the new customer eligibility and other requirements recently announced by the FCC *In the Matter of Lifeline and Link-Up, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 03-109, FCC 04-87 (Released April 29, 2004). Mr. Shively supplemented his direct testimony and incorporated as Revised Exhibit E to his direct testimony Centennial's revised Lifeline/Link Up illustrative tariff, which incorporated the changes reflected in the FCC's recent rule changes.⁷ Mr. Shively also confirmed in his direct testimony that Centennial would file and maintain Lifeline/Link Up tariffs with the Commission once it receives ETC designation in Indiana.

Mr. Shively further testified that Centennial will advertise the availability of the supported services in Indiana using media of general distribution, including television, radio, newspaper, the yellow pages and the Internet, and as otherwise required by 47 U.S.C. 214(e)(1) and 47 C.F.R. 54.201(d). He explained that Centennial intends to advertise the availability of the supported services and the corresponding charges within its designated ETC service area in a manner that will fully inform the general public of the available offerings. Mr. Shively emphasized that Centennial will advertise its proposed Lifeline/Link Up programs through newspaper advertising, explanatory written materials at Centennial's retail stores, and by posting information on the Universal Service Administrative Company ("USAC") sponsored public

⁷ On July 19, 2004, Centennial filed a *Motion to Supplement the Testimony of Jeffrey L. Shively* seeking to incorporate Centennial's revised, updated illustrative Lifeline/Link Up tariff. The Commission granted Centennial's motion at the July 26, 2004 evidentiary hearing and Centennial's Revised Exhibit E was entered into the record as part of Mr. Shively's testimony.

access website. Mr. Shively also indicated that Centennial will comply with all form and content requirements, if any, adopted by the FCC or the Commission in the future required of all ETCs.

Mr. Shively further testified as to the geographic scope of Centennial's proposed ETC service territory. He explained that Centennial seeks designation as an ETC in specific exchanges or wire centers within the study areas of the rural local exchange carriers identified in Exhibit E attached to Centennial's Renewed Application⁸ because Centennial is permitted to serve only its FCC-licensed areas, which are not based on the study areas of the RLECS, and sometimes include only parts of the underlying RLECs' study areas. However, Mr. Shively emphasized that Centennial seeks designation as an ETC in all areas in which it is currently licensed to provide service in Indiana.

Mr. Shively next explained his conclusion that Centennial's request for ETC designation was in the "public interest." He testified that because Centennial is seeking to be designated as an additional, competitive ETC in rural service areas in Indiana, the Commission must also find that the public interest would be served by designating Centennial as an ETC in those rural areas where it seeks designation. He then referenced the "public interest" analysis adopted by the Commission in the *Centennial Order* and *Nextel Order* which, in his words, provided a specific template or "road map" of the evidence necessary to show that the public interest would be served by granting Centennial's request for designation as an ETC. Mr. Shively stated that he was aware of the "public interest" factors and commitments enumerated by the FCC in *Virginia Cellular* and adopted by the Commission in its *Centennial Order* and *Nextel Order* and believed that Centennial's evidence satisfied the "public interest" analysis adopted by the Commission and the FCC.

Mr. Shively stated that designation of competitive ETCs like Centennial promotes competition and benefits consumers in rural, high-cost areas by increasing customer choice, innovative services, and new technologies and by lowering prices. In addition to the benefits of competition, he noted advantages Centennial's wireless service offering provides rural Indiana consumers. According to Mr. Shively, such advantages include, but are not limited to, the following:

- a. Centennial's service offers mobility, which assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools and other critical community locations.
- b. Centennial's service offers safety – the ability to always find someone you are trying to contact. This is especially important for parents who want to know they can always contact their children.
- c. Centennial's service offers local and long distance all on one bill with large buckets of minutes included in the rate plan. Centennial also offers nationwide

⁸ Centennial's original Exhibits E and E-1 attached to its Renewed Application were subsequently supplanted by Centennial's Revised Exhibit E and Revised Exhibit E-1 attached to Mr. Shively's supplemental testimony prefiled with the Commission on October 8, 2004.

rate plans which allow customers to use their Centennial telephone throughout much of the country.

- d. Centennial offers a variety of options including free incoming calls, free nights and weekends, free long distance and free Centennial mobile to Centennial mobile calls.
- e. Centennial already offers number portability in Fort Wayne, Indiana in accordance with FCC requirements, and will offer number portability in all other areas by May 24, 2004. This will give customers the ability to keep their phone number when they switch carriers. This increases customer choice and will cause carriers to increase customer service to ensure they keep their customers satisfied.
- f. Centennial generally offers larger local calling areas than the landline local telephone companies against which it competes. Consequently, Centennial's customers are generally subject to fewer toll charges.
- g. Technology that Centennial has deployed and will deploy will give customers the ability to access the Internet from their wireless phones, to obtain stock quotes, weather reports and other useful information.

According to Mr. Shively, the only disadvantage he could see in Centennial's service offering is that Centennial's service coverage area contains "gaps" or "dead spots," which are limited portions of its service area that are subject to dropped calls or where phones may not have service. He explained that "gaps" or "dead spots" within a wireless carrier's service area are typical with wireless technology and service. Mr. Shively committed in his testimony that Centennial would remedy the "gaps" or "dead spots" associated with its service in the rural areas where it seeks designation as an ETC in Indiana. Mr. Shively concluded his discussion of the disadvantages associated with its service offering by stating his opinion that the existence of any "gaps" or "dead spots" in Centennial's service area should not serve as a basis for denying Centennial's request for designation as an ETC, especially where Centennial has committed to remedying such "gaps" or "dead spots."

Mr. Shively next described Centennial's review of its existing network, facilities, and service offerings, including the existence of any network infirmities, "dead spots," or "gaps" within Centennial's proposed ETC designated service area. He identified seven prospective new cell sites that Centennial proposes to construct using USF funds, to improve service coverage in the sparsely populated rural areas where Centennial seeks designation as an ETC. Mr. Shively stated that the seven new cells are positioned to cover the largest population centers in the unserved rural areas in Centennial's proposed ETC designated service area.

Mr. Shively attached as Exhibits F-1 and F-2 to his testimony maps depicting Centennial's existing network and the "gaps" or "dead spots" existing therein. Mr. Shively also attached as Exhibit G to his testimony a list identifying Centennial's proposed seven new cell

site locations which Centennial proposes to construct/install with USF funds.⁹ However, Mr. Shively confirmed in his testimony that its existing network was consistent with FCC guidelines for ETCs and that most, if not all, of the "gaps" or "dead spots" identified in its proposed ETC service area would be remedied by construction of the seven proposed new cell sites. Mr. Shively explained that of the seven proposed cell sites, six are located within the boundaries of an ETC area where improvement is intended. Consequently, a high level of service will be provided in those ETC areas in the vicinities of the new towers ensuring that the signal is brought up to the indicated criteria.¹⁰ The seventh (Burrows) is immediately adjacent to an irregularly shaped ETC area. The existing tower chosen as the intended location for this cell will allow fast service introduction and its location is intended to improve service in parts of that ETC area where present signal levels are lower than chosen criteria.

Mr. Shively testified that the proposed seven new cell sites are sites that would not be built, but for USF funding. (TR. 39.) As Mr. Shively explained, Centennial maintains a list of potential new cell site locations that Centennial would like to add to its network. Centennial's list currently consists of five or six pages and identifies over 173 potential sites. (TR. 56.) However, due to limited resources, Centennial has to prioritize each year which, if any, additional cell sites will be added to its network. This means that most of the cell sites identified in the list never come to fruition, as lower priority sites get bumped or passed over for higher priority sites. As Mr. Shively acknowledged at the hearing, "we've got sites that are on that list that have been there for six years, and they didn't even get considered this year." (TR. 61.)

Mr. Shively also explained how Centennial will address requests for service from customers who are located within Centennial's requested ETC-designated service area, but who are unable to receive service because they are outside of Centennial's existing coverage. While stating that the construction of the new cell sites discussed above would greatly mitigate this issue, Mr. Shively committed that Centennial would track and annually report the number of customers within Centennial's proposed ETC service area who request service from Centennial, but who are unable to receive service because they are outside Centennial's existing network coverage. With respect to such requests, Mr. Shively stated that Centennial would take the following steps: (1) evaluate whether the requesting customer's equipment can be modified or replaced to provide service; (2) evaluate whether adjustments can be made to the nearest cell site to provide service; (3) evaluate whether adjustments can be made to the existing network, including adding additional radios, additional electronics or other equipment; (4) evaluate whether there are any other adjustments that can be made to the network or customer facilities to provide service and (5) evaluate whether an additional cell site, cell extender or repeater can be deployed or can be constructed to provide service. Mr. Shively confirmed in his testimony that

⁹ Exhibits F-1, F-2, and G to the direct testimony of Jeffrey Shively were submitted into the record subject to confidential treatment and protection. *See, infra*.

¹⁰ In his testimony presented at the evidentiary hearing, Mr. Shively explained what Centennial meant by "indicated" or "chosen" criteria. Mr. Shively stated: "What we're actually talking about doing is if you go back and look at those, we're trying to raise the signal level outside to a -81dbM, and then in addition to that, too, we're trying to raise the in-building penetration to a -76dbM. What that will do is it will give you good in-building penetration, so it will work inside and in your car driving in the area." (TR. 57.)